

MONTANA LEGISLATIVE HISTORY

Chapter 508 19 92

Bill H 537 S _____ Original bill & history ☒ C

H. Committee on State Admin

Hearing Date(s) Feb 18 ☒ C

Feb 20 ☒ C

_____ C

_____ C

Date Out _____ C

S. Committee on State Admin

Hearing Date(s) Mar 13 ☒ C

Mar 18 ☒ C

_____ C

_____ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

1997 LEGISLATIVE HISTORY

The 1997 Montana Legislature has dramatically changed the nature of the legislative minutes. Specifically, the minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are somewhat fuller in content. Exhibits available from the State Law Library (which may include written statements, attendant information, roll call votes, roll call attendance, a list of public members present, specific action taken on legislative bills, etc.) are included with this request. For information on other exhibits, contact the Montana Historical Society Archives at 444-4774. Exhibits may also be purchased on a CD-ROM from the Montana Legislative Council (444-3064).

Just as in the 1995 legislative session, the House and Senate hearings were recorded. The Historical Society is the depository for the tapes. For information on accessing the tapes, call the archives at 444-4774.

If you have concerns over the format of the 1997 legislative minutes, it is suggested that you contact your state legislators.

4/04 SIGNED BY GOVERNOR
CHAPTER NUMBER 200
EFFECTIVE DATE: 01/01/98

HB 533 INTRODUCED BY DEVANEY, ET AL.

LC1162 DRAFTER: MALY

PROVIDE AN EXEMPTION FROM REAL ESTATE LICENSURE
REQUIREMENTS FOR A PERSON WHO PERFORMS ACTS WITH
RESPECT TO CERTAIN RIGHT-OF-WAY TRANSFERS, CONDEMNATIONS,
OR GOVERNMENTAL OR TRIBAL PERMITS

2/12	INTRODUCED		
2/12	FIRST READING		
2/12	REFERRED TO BUSINESS & LABOR		
2/17	HEARING		
2/18	FISCAL NOTE REQUESTED		
2/19	COMMITTEE REPORT—BILL PASSED		
2/24	2ND READING PASSED	64	34
2/26	3RD READING PASSED	68	32
	TRANSMITTED TO SENATE		
3/04	FIRST READING		
3/04	REFERRED TO BUSINESS & INDUSTRY		
3/19	HEARING		
3/21	COMMITTEE REPORT—BILL CONCURRED		
3/27	2ND READING CONCURRED	50	0
3/28	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE		
4/04	SIGNED BY SPEAKER		
4/05	SIGNED BY PRESIDENT		
4/07	TRANSMITTED TO GOVERNOR		
4/14	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 251		
	EFFECTIVE DATE: 10/01/97		

HB 534 INTRODUCED BY WELLS, ET AL.

LC1316 DRAFTER: ERICKSON

MAKE THE STATE LIABLE FOR INTEREST AND ATTORNEY FEES IN A
JUDGMENT INVOLVING A CONTRACT

2/12	INTRODUCED		
2/12	FIRST READING		
2/12	REFERRED TO STATE ADMINISTRATION		
2/12	FISCAL NOTE REQUESTED		
2/17	FISCAL NOTE RECEIVED		
2/18	HEARING		
2/18	FISCAL NOTE PRINTED		
2/20	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/24	2ND READING PASSED	87	12
2/26	3RD READING PASSED	71	28
	TRANSMITTED TO SENATE		
3/04	FIRST READING		
3/04	REFERRED TO JUDICIARY		
3/06	REREFERRED TO STATE ADMINISTRATION		
3/13	HEARING		
3/20	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/27	2ND READING CONCURRED	32	16
3/28	3RD READING CONCURRED	38	10
	RETURNED TO HOUSE WITH AMENDMENTS		
4/09	2ND READING AMENDMENTS CONCURRED	100	0
4/11	3RD READING CONCURRED AS AMENDED	74	22
4/15	SIGNED BY SPEAKER		

4/15	SIGNED BY PRESIDENT		
4/17	TRANSMITTED TO GOVERNOR		
4/21	RETURNED TO HOUSE WITH GOVERNOR'S PROPOSED AMENDMENTS		
4/21	2ND READING GOVERNOR'S AMENDMENTS NOT CONCURRED	69	29
	SENATE		
4/21	2ND READING GOVERNOR'S AMENDMENTS NOT CONCURRED	32	16
4/22	TRANSMITTED TO GOVERNOR FOR RECONSIDERATION		
5/01	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 508		
	EFFECTIVE DATE: 05/01/97		

HB 535 INTRODUCED BY WELLS, ET AL. LC1164 DRAFTER: MCCLURE

REVISE THE COLLECTIVE BARGAINING PROVISIONS FOR PUBLIC EMPLOYEES TO PROVIDE THAT A PUBLIC EMPLOYEE HAS THE RIGHT TO CHOOSE NOT TO JOIN OR FINANCIALLY SUPPORT A LABOR ORGANIZATION

2/12	INTRODUCED		
2/12	FIRST READING		
2/12	REFERRED TO BUSINESS & LABOR		
2/12	FISCAL NOTE REQUESTED		
2/15	FISCAL NOTE RECEIVED		
2/15	FISCAL NOTE PRINTED		
2/17	HEARING		
2/17	TABLED IN COMMITTEE		
2/24	MOTION FAILED TO TAKE FROM COMMITTEE & PUT ON 2ND READING	29	68
2/27	MISSED DEADLINE FOR 45TH DAY TRANSMITTAL DIED IN COMMITTEE		

HB 536 INTRODUCED BY BOHLINGER LC0155 DRAFTER: MCCLURE

ESTABLISH THE FAMILY EDUCATION SAVINGS ACT

2/12	INTRODUCED		
2/12	FIRST READING		
2/12	REFERRED TO TAXATION		
2/12	FISCAL NOTE REQUESTED		
2/19	HEARING		
2/19	FISCAL NOTE RECEIVED		
2/20	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/20	FISCAL NOTE PRINTED		
3/07	2ND READING PASSED	75	25
3/10	3RD READING PASSED	79	20
	TRANSMITTED TO SENATE		
3/11	FIRST READING		
3/11	REFERRED TO TAXATION		
3/19	HEARING		
4/10	COMMITTEE REPORT—BILL CONCURRED		
4/15	2ND READING CONCURRED	37	12
4/16	3RD READING CONCURRED	38	12
	RETURNED TO HOUSE		
4/24	SIGNED BY SPEAKER		
4/24	SIGNED BY PRESIDENT		
4/25	TRANSMITTED TO GOVERNOR		
5/05	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 540		
	EFFECTIVE DATE: 07/01/97		

House BILL NO. 534

INTRODUCED BY

Well Botney

A BILL FOR AN ACT ENTITLED: "AN ACT MAKING THE STATE LIABLE FOR INTEREST AND ATTORNEY FEES IN A JUDGMENT INVOLVING A CONTRACT; MAKING A GOVERNMENTAL ENTITY LIABLE FOR INTEREST ON A JUDGMENT; AMENDING SECTION 18-1-404, MCA; REPEALING SECTION 2-9-317, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 18-1-404, MCA, is amended to read:

"18-1-404. Liability of state — ~~limitations~~ -- costs. (1) The state of Montana ~~shall be~~ is liable in respect to any contract entered into in the same manner and to the same extent as a private individual under like circumstances, except the state of Montana ~~shall is~~ is not be liable ~~for interest prior to or after judgment or for punitive damages.~~ The state of Montana is liable for interest from the date on which the payment on the contract became due.

(2) Costs may be allowed as provided in 25-10-711. In all other cases, costs ~~shall~~ must be allowed in all courts to the successful claimant to the same extent as if the state of Montana were a private litigant, ~~except that such~~ The costs shall must not include attorney's attorney fees."

NEW SECTION. Section 2. Repealer. Section 2-9-317, MCA, is repealed.

NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0534, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

act making the state liable for interest and attorney fees in contract cases and making governmental entity liable for interest on a judgment.

ASSUMPTIONS:

The bill requires payment of interest and attorney fees by the state in contract actions. It also allows for interest from the date on which payment of the contract becomes due. This is more generous than current law (Mont. Code Ann. § 27-1-211), which only allows prejudgment interest on sums reasonably certain or capable of calculation on a certain day. Current case law holds that the state is not liable for prejudgment interest except moratory interest (costs of actual borrowing, which is actual damages and not interest), and that recovery of prejudgment interest against the state is barred by sovereign immunity.

The bill's provision for attorney's fees is broader than current law and is more generous than cases not involving the state. Under current law, attorney's fees are allowed in contract actions only if expressly provided for in the contract, whether the state is a party or not. If bad faith is involved, attorney's fees are presently recoverable against the state.

The bill also would repeal Mont. Code Ann. § 2-9-317, under which the state currently has two years to pay a judgment without incurring penalties or interest. This provision recognizes that agencies may not be able to pay a judgment out of currently available funds and mirrors Mont. Code Ann. § 18-1-414, under which final judgments in contract actions are to be paid out of funds appropriated by the legislature in the next session. Making agencies liable for interest prior to the 2-year time limit will increase the cost of contract awards, since payment likely will have to await an appropriation by the next legislature under any circumstances.

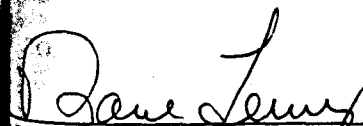
FISCAL IMPACT:

The proposal will increase state expenditures through the requirement for payment of attorney fees and interest. The impact cannot be calculated with certainty, however.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Passage of the bill may affect the state's decision to appeal cases to the Supreme Court because the state will be forced to pay the additional interest charges if it loses.

If this bill had been in effect 10 years ago, the division would have incurred in excess of an additional \$250,000 in interest charges on judgements.

 2-17-97
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

JACK WELLS, PRIMARY SPONSOR DATE

Fiscal Note for HB0534, as introduced

HOUSE STATE ADMINISTRATION

Page 6

BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE ----- REREFERRED ---- DATE READ									
HB0527	RYAN, WILLIAM		AD HOC PERMANENT POSTRETIREMENT BENEFIT INCREASE FOR RETIRED FIREFIGHTERS						
	2/12	2/17		TABLED ON	3/21	VOTE: 10-6			
HB0534	WELLS, JACK		STATE LIABILITY TO INCLUDE INTEREST AND COSTS						
	2/12	2/18		PASS AS AMENDED	2/20	VOTE: 13-3			2/20
HB0550	COCCHIARELLA, VICKI		GENERALLY REVISING AND CLARIFYING WHAT ELECTIONS MAY BE CONDUCTED BY MAIL						
	2/13	2/18		DO PASS	2/18	VOTE: 16-0			2/20
HB0565	MENAHAN, RED		RETIREMENT INCENTIVE PROGRAM FOR MEMBERS OF PERS AND STATE TRS MEMBERS						
	2/15	2/19		TABLED ON	3/27	VOTE: 13-3			
HB0568	OHS, KARL		LEWIS & CLARK BICENTENNIAL COMMISSION						
	2/15	2/18		DO PASS	2/18	VOTE: 14-0			2/18
HB0569	SQUIRES, CAROLYN		ALLOW CERTAIN PERS FIREFIGHTERS TO REMAIN IN PERS INSTEAD TRANSFER TO FURS						
	2/15	2/19		DO PASS	2/20	VOTE: 16-0			2/20
HB0575	REHBEIN, WILLIAM		REVISE CAMPAIGN FINANCE LIMITS IMPOSED BY I-125						
	2/17	2/19		PASS AS AMENDED	2/20	VOTE: 11-5			2/20
HB0579	KITZENBERG, SAM		REVISE ETHICS LAWS GOVERNING PUBLIC OFFICERS AND EMPLOYEES						
	2/18	2/19		PASS AS AMENDED	2/20	VOTE: 12-4			2/20
HJ0004	MCCANN, MATT		JOINT RESOLUTION REQUESTING STUDY OF STATE PROPERTY MANAGEMENT						
	1/06	1/21		DO PASS	1/22	VOTE: 16-0			1/23
HJ0006	HEAVY RUNNER, GEORGE		AUTHORIZE PERMANENT DISPLAY OF WOMEN LEGISLATOR PLAQUE						
	1/18	1/29		DO PASS	1/29	VOTE: 16-0			1/30
HJ0012	PAVLOVICH, BOB		RESOLUTION URGING CONGRESS TO ALLOW DISABILITY & RETIREMENT FOR VETERANS						
	1/31	2/07		DO PASS	2/07	VOTE: 12-3			2/08
HJ0016	PAVLOVICH, BOB		RESOLUTION COMMEMORATING 163RD INFANTRY REGIMENT MT ARNG						
	2/06	2/12		DO PASS	2/12	VOTE: 16-0			2/13

x

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN MATT DENNY**, on February 18, 1997, at 9:00 a.m., in room 420.

ROLL CALL

Members Present:

Rep. Matt Denny, Chairman (R)
Rep. Matt Brainard, Vice Chairman (Majority) (R)
Rep. Antoinette R. Hagener, Vice Chairman (Minority) (D)
Rep. Darrel Adams (R)
Rep. Haley Beaudry (R)
Rep. Tim Dowell (D)
Rep. Harriet Hayne (R)
Rep. George Heavy Runner (D)
Rep. Sam Kitzenberg (R)
Rep. Norm Mills (R)
Rep. Doug Mood (R)
Rep. William Rehbein, Jr. (R)
Rep. Trudi Schmidt (D)
Rep. Dorothy C. Simpson (D)
Rep. Allan Walters (R)
Rep. Bill Whitehead (D)

Members Excused: None.

Members Absent: None.

Staff Present: Sheri Heffelfinger, Legislative Services Division
Keri Burkhardt, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: HJR 22, HB 534 (2/13/97); HB
550 (2/14/97); HB 568
(2/15/97).

Executive Action: HB 394, HB 496, SB 76, HB 568,
HJR 22, HB 121, HB 173, HB 142
HB 550.

EXECUTIVE ACTION ON HB 394

Amendments: hb039403.agp

Motion: REP. KITZENBERG MOVED DO PASS.
{Tape: 1; Side: a; Approx. Time Count: .9.}

HEARING ON HB 534

Opening Statement by Sponsor: REP. JACK WELLS, H.D. 27.
{Tape: 2; Side: a; Approx. Time Count: 7.9.}

Proponents' Testimony:

Herb Richards.

{Tape: 2; Side: a; Approx. Time Count: 10.3.}

Jim Crane, Executive Director, Montana Contractors Association.

{Tape: 2; Side: a; Approx. Time Count: 15.5.}

John Richards.

{Tape: 2; Side: a; Approx. Time Count: 16.3.}

Informational Testimony:

Tim Ridden, Chief Legal Council, Department of Transportation.
EXHIBIT 11,12.

{Tape: 2; Side: a; Approx. Time Count: 20.1.}

Bill Gianoulias, Department of Administration.

{Tape: 2; Side: a; Approx. Time Count: 28.}

Questions From Committee Members and Responses:

{Tape: 2; Side: a; Approx. Time Count: 30.6.}

Closing by Sponsor: REP. WELLS closes.

{Tape: 2; Side: a; Approx. Time Count: 39.4.}

EXECUTIVE ACTION ON HB 121

Motion: REP. BRAINARD MOVED DO PASS.

{Tape: 2; Side: a; Approx. Time Count: 40.}

Discussion:

David Senn, Executive Director, Teachers Retirement System
answered questions.

{Tape: 2; Side: b; Approx. Time Count: .1.}

Motion: REP. DOWELL MOVED TO AMEND.

{Tape: 2; Side: b; Approx. Time Count: 6.8}

Vote: REP. DENNY CALLED THE QUESTION. Motion denied 7-9. Rep.
Dowell, Rep. Hagener, Rep. Heavy Runner, Rep. Mills, Rep.
Schmidt, Rep. Simpson, and Rep. Whitehead voted yes.

{Tape: 2; Side: b; Approx. Time Count: 8.5.}

Motion: REP. DENNY MOVED DO PASS. Motion carried 14-2. Rep.
Dowell and Rep. Rehbein voted no.

{Tape: 2; Side: b; Approx. Time Count: 9.3.}

Submitted By Tim Reardon - MDT
For HB 534

EXHIBIT 11
DATE 2/18/97
HB 534

Chronology of the Topco Lawsuit

- 11-14-90 Complaint filed in Missoula County.
- 12-17-90 Complaint served on the State.
- 10-30-91 Missoula County Court moves the case to Lewis and Clark County
- 11-15-93 Non-jury trial conducted in Lewis and Clark County before Judge Sherlock.
- 3-17-94 Court's Findings of Fact, Conclusions of Law and Order Entered. Court concludes that Topco is to be awarded the 50 acres of PTW, but only at the Topco bid price of \$1,750 for an amount of \$87,500. Court orders that Topco is not entitled to interest or attorney's fees. Trial court does not agree with the assignment amount of \$3,600 bid price of Washington. The trial court does not award Topco any consequential damages that were claimed and orders that Topco is not entitled to interest or attorney's fees.
- 6-23-94 Judgment entered in the amount of \$87,500. Judgment prepared by Topco, Inc., which tried to claim interest from 3-17-94 until paid, contrary to the actual finding and order by the Judge.
- 6-27-94 Plaintiff Topco submits a Motion for Stay of Execution or Proceeding on the Judgment preventing the State from doing anything on the Judgment, which was granted by the Court on 6-27-94.
- 6-27-94 Topco files Notice of Appeal to the Montana Supreme Court.
- 9-18-95 After preparation of the transcript and mutual agreements to request more time to prepare the appeal, the case is finally submitted to the Supreme Court.
- 10-12-95 Supreme Court orders submission of the case on briefs, no oral argument.
- 3-11-96 Supreme Court decision entered affirming the PTW award, reverses the assignment issue and awards Topco the \$3,600 bid price which increases the original judgment to \$180,000, reverses and allows measurement to be on the slope rather than horizontal, affirms the State's position on consequential damages being denied Topco, remands the case for calculation to determine areas that may be cleared but not paid for.
- 5-6-96 State requests payment of the PTW acres in the amount of \$180,000 and based upon the statutes, does not pay interest.

- 5-20-96 Check for the \$180,000 minus \$90,000 pursuant to IRS levy is issued.
- 5-22-96 Check received by Topco.
- 6-28-96 The Department, with agreement of the Court and Plaintiff's counsel, hires independent consultant to determine the acres cleared and grubbed based upon slope measurement. Based upon the consultant's work, the Department concludes that an additional 30.5 acres at \$3,600 an acre is owed Topco in the amount of \$110,000.
- 8-15-96 Independent consultant submits his report on slope measurement.
- 9-12-96 Topco still believes that a complete remeasure of the project is needed, State disagrees. The parties, with the Court's approval, agree to pay the \$110,000 for the slope measurement and either litigate or negotiate the issue of a total remeasure.
- 10-17-96 Check processed for \$110,000.
- 10-18-96 Check received by Topco.
- 1-9-97 Topco insists that there is additional acres that were cleared and grubbed that need to be paid for and the State disagrees. Topco wants the State to do a complete remeasure of the project and pay for it. The estimated cost is \$75,000.

This matter is still presently pending with the next hearing before the Court set for April 3, 1997.

12
DATE 2/18/97
HB 534

SUBMITTED BY Tim Reardon MDT

HB 534 Rep. Wolf

CASE REGISTER REPORT

File Number: DV-25-1991-1925 Status: REO Closed Date: 06/23/1994
From Seq #: 1.0 Filing Date: 11/15/1991
Title: Last Opened Date: 04/22/1996
Action Text: BREACH OF CONTRACT First Closed Date: 06/23/1994

Type Stat NType Name

AStat Attorneys

Plaintiff/Petitioner

P ACT TOPCO, INC., A MONTANA CORPORATION ACT REEP, RICHARD A.

Defendant/Respondent

D ACT HIGHWAYS, DEPARTMENT OF, STATE OF ACT ROTERING, NICHOLAS; GA

Judge

Dept Start Dt Status

MCCARTER, DOROTHY A 11/15/1991 ACTIVE JUDGE IN CASE

Seq#	Ent Dt	File Dt	Register Text	Amount	Book	Film
1.0	11/15/91	11/15/91	TRANSFER FROM MISSOULA COUNTY	\$.00		
2.0	11/15/91	11/15/91	LETTER FROM CAROLYNE J. WHEELER, DEPUTY KATHLEEN D. BREUER, CLERK OF DISTRICT COURT, MISSOULA, MONTANA			
3.0	01/08/92	01/08/92	MINUTE ENTRY-SCHEDULING CONFERENCE SET FOR 1/22/92 3:15			
4.0	01/15/92	01/15/92	LETTER TO JUDGE SHERLOCK FROM RICHARD A. REEP			
5.0	01/22/92	01/22/92	SCHEDULING MINUTE ENTRY ORDER NON-JURY TRIAL 9/8/92 9:00. PRETRIAL CONFERENCE 8/28/92 3:30			
6.0	01/30/92	01/30/92	ANSWER			
7.0	07/08/92	07/08/92	LETTER FROM RICHARD A. REEP			
8.0	07/08/92	07/08/92	STIPULATION TO AMEND PORTIONS OF SCHEDULING ORDER			
9.0	07/24/92	07/24/92	NOTICE OF FILING DISCOVERY			
10.0	07/28/92	07/28/92	LETTER FROM RICHARD A. REEP			
11.0	07/28/92	07/28/92	STIPULATION & ORDER - PLAINTIFF MAY HAVE UP TO AND INCLUDING JULY 30, 1992 IN WHICH TO RESPOND TO DEFENDANT'S FIRST SET OF DISCOVERY REQUESTS			

DV-25-1991-1925

TOPCO vs. HIGHWAYS

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CASE REGISTER REPORT (Continued)

File Number: DV-25-1991-1925	Status: REO	Closed Date: 06/23/1994
Title:	From Seq #: 1.0	Filing Date: 11/15/1991
Action Text: BREACH OF CONTRACT		Last Opened Date: 04/22/1996
		First Closed Date: 06/23/1994

- 12.0 08/10/92 08/10/92 MOTION FOR CONTINUANCE OVER
TERM & FOR NEW SCHEDULING
ORDER
- 13.0 08/11/92 08/11/92 STIPULATION AND ORDER
PLAINTIFFS HAVE TO 8/14/92
TO RESPOND TO DEFENDANT'S
FIRST SET OF DISCOVERY
REQUESTS
- 14.0 08/13/92 08/13/92 SCHEDULING MINUTE ENTRY
ORDER - JURY TRIAL SET FOR
SEPTEMBER 8, 1992 IS RESET
TO MARCH 29, 1993 AT
9:00AM, JURY PANEL WILL BE
DRAWN ON MARCH 18, 1993 AT
10:00AM, A PRETRIAL
CONFERENCE IS SET FOR MARCH
19, 1993 AT 3:00
- 15.0 08/18/92 08/18/92 NOTICE OF FILING DISCOVERY
ANSWERS
- 16.0 02/22/93 02/22/93 MINUTE ENTRY HEARING ON
MERITS RESET TO 5/3/93
9:00. PRETRIAL CONFERENCE
4/22/93 3:30
- 17.0 02/23/93 02/23/93 DEFENDANT'S MOTION
REQUESTING A TELEPHONIC
SCHEDULING CONFERENCE
- 18.0 02/24/93 02/24/93 ORDER SETTING TELEPHONIC
SCHEDULING CONFERENCE
3/12/93 3:00
- 19.0 03/16/93 03/16/93 SCHEDULING MINUTE ENTRY
ORDER - NON-JURY TRIAL
11-15-93 @9:00 & PRETRIAL
CONFERENCE 11-5-93 @3:30
- 20.0 09/16/93 09/16/93 NOTICE OF FILING OF
DISCOVERY
- 21.0 10/12/93 10/12/93 MINUTE ENTRY, DUE TO A
CONFLICT, THE PRE TRIAL
CONFERENCE IS RESET TO
11/4/93 @ 3:30 PM
- 22.0 10/15/93 10/15/93 DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT
- 23.0 10/15/93 10/15/93 BRIEF IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT
- 24.0 10/26/93 10/26/93 DEFENDANT'S MOTION TO
VACATE & RESCHEDULE TRIAL
DATE
- 25.0 10/26/93 10/26/93 BRIEF IN SUPPORT OF
DV-25-1991-1925 TOPCO vs. HIGHWAYS

CASE REGISTER REPORT (Continued)

File Number: DV-25-1991-1925 Status: REO Closed Date: 06/23/1994
 Title: From Seq #: 1.0 Filing Date: 11/15/1991
 Action Text: BREACH OF CONTRACT Last Opened Date: 04/22/1996
 First Closed Date: 06/23/1994

DEFENDANT'S MOTION TO
 VACATE & RESCHEDULE TRIAL
 DATE
 26.0 10/28/93 10/28/93 PRAECIPE FOR ADDITION OF
 ATTORNEY
 27.0 10/28/93 10/28/93 NOTICE IN FILING DISCOVERY
 28.0 10/29/93 10/29/93 PLAINTIFF'S MOTION FOR
 SUMMARY JUDGMENT
 29.0 10/29/93 10/29/93 PLAINTIFF'S BRIEF IN
 SUPPORT OF MOTION FOR
 SUMMARY JUDGMENT
 30.0 11/01/93 11/01/93 NOTICE OF DEPOSITION - J.
 DAVID STAHL
 31.0 11/01/93 11/01/93 PLAINTIFF'S BRIEF IN
 OPPOSITION TO DEFENDANT'S
 MOTION TO VACATE &
 RESCHEDULE TRIAL DATE
 32.0 11/01/93 11/01/93 MINUTE ENTRY (11-1-93)
 HEARING ON MOTION TO
 CONTINUE, HEARING ON MERITS
 11-15-93 @9:00
 33.0 11/01/93 11/01/93 DEFENDANT'S RESPONSE TO
 PLAINTIFF'S MOTION FOR
 SUMMARY JUDGMENT
 34.0 11/02/93 11/02/93 ORDER - PLAINTIFF WILL FILE
 AND SERVE ITS RESPONSE BY
 11-4-93
 35.0 11/02/93 11/02/93 PLAINTIFF'S BRIEF IN
 OPPOSITION TO DEFENDANT'S
 MOTION FOR SUMMARY JUDGMENT
 36.0 11/03/93 11/03/93 MOTION TO ALLOW
 SUBSTITUTION OF PAGES IN
 BRIEF IN OPPOSITION TO
 MOTION FOR SUMMARY JUDGMENT
 37.0 11/03/93 11/03/93 NOTICE OF SUBMISSION
 38.0 11/03/93 11/03/93 DEPARTMENT'S RESPONSE
 MEMORANDUM ON ITS MOTION
 FOR SUMMARY JUDGMENT
 39.0 11/04/93 11/04/93 PROPOSED FINDINGS OF FACT
 AND CONCLUSIONS OF LAW
 40.0 11/04/93 11/04/93 PROPOSED FINDINGS OF FACT
 AND CONCLUSIONS OF LAW
 (DEFENDANT'S)
 41.0 11/04/93 11/04/93 PRE-TRIAL ORDER
 42.0 11/05/93 11/05/93 MINUTE ENTRY, PRE TRIAL
 CONFERENCE THIS DAY HELD,
 UPON MOTION AND OVER

DV-25-1991-1925

TOPCO vs. HIGHWAYS

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C A S E R E G I S T E R R E P O R T (Continued)

File Number: DV-25-1991-1925 Status: REO Closed Date: 06/23/1994
Title: Filing Date: 11/15/1991
Action Text: BREACH OF CONTRACT Last Opened Date: 04/22/1996
First Closed Date: 06/23/1994

OBJECTION, THE COURT
GRANTED THE DEFENDANT'S
MOTION TO AMEND THEIR
ANSWER, MERIT HEARING SET
FOR 11/15/93 @ 9 AM
43.0 11/10/93 11/10/93 DEFENDANT'S AMENDED ANSWER
44.0 11/12/93 11/12/93 ORDER ON MOTION FOR SUMMARY
JUDGMENT
45.0 11/16/93 11/16/93 PLAINTIFF'S TRIAL
MEMORANDUM
46.0 11/16/93 11/16/93 MINUTE ENTRY 11/15, HEARING
ON MERITS, COURT GRANTED
LEAVE TO FILE DISCOVERY,
WITNESSES SWORN AND
TESTIFIED, EXHIBITS
ADMITTED, COURT RECESSED
UNTIL 11/16/93 AT 9:00
47.0 11/16/93 11/16/93 DEFENDANT'S RESPONSE TO
PLAINTIFF'S FIRST
INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS
TO DEFENDANT
48.0 11/16/93 11/16/93 DEPOSITION OF JAMES
MITCHELL
49.0 11/16/93 11/16/93 DEPOSITION OF JAMES WEAVER
50.0 11/17/93 11/17/93 MINUTE ENTRY 11/16, HEARING
ON THE MERITS, WITNESSES
SWORN & TESTIFIED, EXHIBITS
ADMITTED, THE COURT
RECESSED UNTIL 11/17/93 AT
9:30
51.0 11/17/93 11/17/93 DEPOSITION OF JOHN RICHARDS
52.0 11/18/93 11/18/93 MINUTE ENTRY 11/17, HEARING
ON THE MERITS, WITNESSES
SWORN AND TESTIFIED
EXHIBITS ADMITTED, COURT
RECESSED UNTIL 11/18/93 AT
9:00
53.0 11/18/93 11/18/93 MINUTE ENTRY 11/18, MERIT
HEARING HELD TODAY. MATTER
HAVING BEEN FULLY SUBMITTED
THE COURT ORDERED THAT
COUNSEL MAY FILE AMENDED
FINDINGS AND/OR BRIEFS BY
12/13/93, AND REPLY BRIEFS
BY 12/20/93, AT WHICH TIME
THE MATTER WILL BE DEEMED

CASE REGISTER REPORT (Continued)

File Number: DV-25-1991-1925 Status: REO Closed Date: 06/23/1994
 Title: From Seq #: 1.0 Filing Date: 11/15/1991
 Action Text: BREACH OF CONTRACT Last Opened Date: 04/22/1996
 First Closed Date: 06/23/1994

SUBMITTED. THE COURT
 ORDERED TO AMEND THE
 COMPLAINT TO CONFORM WITH
 THE EVIDENCE PRESENTED AT
 THE TRIAL AND THE COURT
 TOOK THE MATTER UNDER
 ADVISEMENT.

- 54.0 11/18/93 11/18/93 RECORD OF EXHIBITS
- 55.0 11/18/93 11/18/93 PLAINTIFF'S ANSWERS TO
 DEFENDANT'S SECOND SET OF
 INTERROGATORIES, REQUESTS
 FOR PRODUCTION OF DOCUMENTS
 & REQUESTS FOR ADMISSIONS
- 56.0 12/13/93 12/13/93 MOTION TO EXTEND DEADLINES
 TO FILE MEMORANDUM AND
 RESPONSES
- 57.0 12/14/93 12/14/93 ORDER - POST-TRIAL
 MEMORANDUM FILED BY
 12-20-93 & RESPONSE TO
 OPPOSITION'S POST-TRIAL
 MEMORANDUM 12-27-93
- 58.0 12/20/93 12/20/93 MOTION TO EXTEND DEADLINES
 TO FILE MEMORANDUM AND
 RESPONSE
- 59.0 12/21/93 12/21/93 ORDER, THE DEADLINE TO FILE
 POST-TRIAL MEMORANDUM IS
 EXTENDED TO 12/23/93 AND
 THE DEADLINE TO FILE
 RESPONSE TO THE
 OPPOSITION'S POST-TRIAL
 MEMORANDUM IS EXTENDED TO
 1/10/94
- 60.0 12/23/93 12/23/93 DEPARTMENT'S POST-TRIAL
 MEMORANDUM
- 61.0 12/27/93 12/27/93 SUPPLEMENTAL FINDINGS OF
 FACT, CONCLUSIONS OF LAW
 AND ORDER
- 62.0 12/27/93 12/27/93 AMENDED FINDINGS OF FACT
 AND CONCLUSIONS OF LAW AND
 ORDER (PROPOSED)
- 63.0 12/27/93 12/27/93 PLAINTIFF'S POST TRIAL
 MEMORANDUM
- 64.0 01/10/94 01/10/94 DEPARTMENT'S POST-TRIAL
 RESPONSE MEMORANDUM
- 65.0 01/11/94 01/11/94 PLAINTIFF'S RESPONSE TO
 DEFENDANT'S POST-TRIAL
 MEMORANDUM

DV-25-1991-1925

TOPCO vs. HIGHWAYS

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CASE REGISTER REPORT (Continued)

File Number: DV-25-1991-1925	Status: REO	Closed Date: 06/23/1994
Title:	From Seq #: 1.0	Filing Date: 11/15/1991
Action Text: BREACH OF CONTRACT		Last Opened Date: 04/22/1996
		First Closed Date: 06/23/1994

66.0	03/17/94	03/17/94	FINDING OF FACT, CONCLUSIONS OF LAW AND ORDER - TOPCO SHALL HAVE JUDGMENT OF \$87,500 AGAINST STATE, COUNSEL FOR PLAINTIFF TO PREPARE JUDGMENT	
67.0	04/11/94	04/11/94	PLAINTIFF'S MOTION TO ALTER OR AMEND FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER AND MEMORANDUM IN SUPPORT	
68.0	04/22/94	04/22/94	DEFENDANT'S ANSWER BRIEF TO PLAINTIFF'S MOTION TO ALTER OR AMEND FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER	
69.0	05/05/94	05/05/94	PLAINTIFF'S REPLY BRIEF TO DEFENDANT'S ANSWER REGARDING LPANTIFF'S MOTION TO ALTER OR AMEND	
70.0	05/26/94	05/26/94	POSTTRIAL ORDER COURT DECLINES TO AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW	
71.0	06/22/94	06/22/94	LETTER FROM RICHARD REEP	
72.0	06/23/94	06/22/94	JUDGMENT	\$45.00
73.0	06/24/94	06/24/94	NOTICE OF APPEAL	\$5.00
74.0	06/24/94	06/24/94	AFFIDAVIT OF MAILING	
75.0	06/24/94	06/24/94	LETTER	
76.0	06/24/94	06/24/94	MOTION FOR STAY OF EXECUTION OR PROCEEDINGS ON JUDGMENT (COPY)	
77.0	06/27/94	06/27/94	LETTER	
78.0	06/27/94	06/27/94	MOTION FOR STAY OF EXECUTION OR PROCEEDINGS ON JUDGMENT	
79.0	06/28/94	06/27/94	ORDER FURTHER ISSUES STAYED PENDING APPEAL	
80.0	07/05/94	07/05/94	MEMORANDUM OF COSTS AND DISBURSEMENTS	
81.0	08/03/94	08/03/94	ORDER GRANTING EXTENSION OF TIME TO PREPARE TRANSCRIPT - 60 DAYS FROM 8/3/94	
82.0	08/22/94	08/22/94	DEFENDANT'S NOTICE OF CROSS-APPEAL	
83.0	08/22/94	08/22/94	AFFIDAVIT OF MAILING	
DV-25-1991-1925			TOPCO vs. HIGHWAYS	

CASE REGISTER REPORT (Continued)

File Number: DV-25-1991-1925 Status: REO Closed Date: 06/23/1994
 Title: From Seq #: 1.0 Filing Date: 11/15/1991
 Action Text: BREACH OF CONTRACT Last Opened Date: 04/22/1996
 First Closed Date: 06/23/1994

84.0 04/03/96 04/03/96 SUPREME COURT OPINION
 85.0 04/03/96 04/03/96 REMITTITUR, AFFIRMED IN
 PART, REVERSED IN PART AND
 REMANDED
 86.0 04/22/96 04/22/96 MOTION FOR SUBSTITUTION OF JUDGE \$100.00
 87.0 04/24/96 04/24/96 DEFENDANT'S OBJECTION TO
 MOTION FOR SUBSTITUTION OF
 JUDGE
 88.0 04/25/96 04/25/96 ASSUMPTION - JUDGE MCCARTER
 TO ASSUME JURISDICTION
 89.0 05/03/96 05/03/96 MEMORANDUM OF COSTS AND
 DISBURSEMENTS
 90.0 05/31/96 05/03/96 MINUTE ENTRY STATUS
 CONFERENCE SET FOR 6/28/96
 AT 1:30PM
 91.0 06/27/96 06/27/96 MOTION AND MEMORANDUM IN
 SUPPORT OF MOTION FOR
 CHANGE OF VENUE AND RECUSAL
 OF JUDGE IN JURISDICTION
 92.0 07/08/96 07/05/96 MINUTE ENTRY 6/28/96 STATUS
 CONFERENCE HELD, MOTION TO
 CHANGE VENUE DENIED, STATUS
 CONFERENCE SET FOR 8/27/96
 AT 1:15 PM, EVIDENTIARY
 HEARING SET FOR 9/12/96 AT
 9:00 AM
 93.0 08/15/96 08/15/96 MOTION TO EXTEND DEADLINES
 TO FILE MEMORANDUM AND
 RESPONSE
 94.0 08/16/96 08/16/96 ORDER EXTENDING DEADLINE TO
 FILE MEMORANDUM ON INTEREST
 TO 8/21/96, AND RESPONSIVE
 BRIEFS TO 10 DAYS
 THEREAFTER
 95.0 08/21/96 08/21/96 DEFENDANT'S BRIEF REGARDING
 INTEREST
 96.0 08/23/96 08/23/96 PLAINTIFF'S BRIEF REGARDING
 JUDGMENT INTEREST
 97.0 09/05/96 09/05/96 DEFENDANT'S REPLY BRIEF
 98.0 09/18/96 09/17/96 MINUTE ENTRY (8/27/96) TIME
 SET FOR TELEPHONIC STATUS
 CONFERENCE, MATTER WILL
 PROCEED TO HEARING 9/12/96
 99.0 09/24/96 09/24/96 MINUTE ENTRY (9/12/96) TIME
 SET FOR TELEPHONIC
 CONFERENCE, EVIDENTIARY

DV-25-1991-1925

TOPCO vs. HIGHWAYS

7

C A S E R E G I S T E R R E P O R T (Continued)

File Number: DV-25-1991-1925	Status: REO	Closed Date: 06/23/1994
From Seq #: 1.0	Filing Date: 11/15/1991	
Title:	Last Opened Date: 04/22/1996	
Action Text: BREACH OF CONTRACT	First Closed Date: 06/23/1994	

HEARING 1/9/96 AT 9:00
100.0 10/09/96 10/09/96 STIPULATION & ORDER FOR
HEARING - HEARING CONTINUED
TO 1/9/97 AT 9:00 (SEE
FILE)
101.0 01/23/97 01/09/97 MINUTE ENTRY (1/9/97) TIME
SET FOR EVIDENTIARY
HEARING, HEARING ON MERITS
4/23/97 AT 2:30

2/18/97

ROLL CALL

NAME	PRESENT	ABSENT	EXCUSED
Rep. Matt Brainard	X		
Rep. Harriet Hayne	X		
Rep. Darrel Adams	X		
Rep. Haley Beaudry	X		
Rep. William Rehbein, Jr.	X		
Rep. Sam Kitzenberg	X		
Rep. Allan Walters	X		
Rep. Norm Mills	X		
Rep. Tim Dowell	X		
Rep. Doug Mood	X		
Rep. Trudi Schmidt	X		
Rep. Bill Whitehead	X		
Rep. George Heavy Runner	X		
Rep. Dorothy C. Simpson	X		
Rep. Antoinette R. Hagener	X		
Rep. Matt Denny	X		

2

VISITOR REGISTER

HOUSE STATE ADMINISTRATION COMMITTEE

DATE: 2/18/97

BILL NO: HR 534 SPONSOR: Wells

[illegible]

Please leave prepared testimony with secretary.
Witness statement forms are available if you care to submit written testimony.

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN MATT DENNY**, on February 20, 1997, at 8:15 a.m., in room 420.

ROLL CALL

Members Present:

Rep. Matt Denny, Chairman (R)
Rep. Matt Brainard, Vice Chairman (Majority) (R)
Rep. Antoinette R. Hagener, Vice Chairman (Minority) (D)
Rep. Darrel Adams (R)
Rep. Haley Beaudry (R)
Rep. Tim Dowell (D)
Rep. Harriet Hayne (R)
Rep. George Heavy Runner (D)
Rep. Sam Kitzenberg (R)
Rep. Norm Mills (R)
Rep. Doug Mood (R)
Rep. William Rehbein, Jr. (R)
Rep. Trudi Schmidt (D)
Rep. Dorothy C. Simpson (D)
Rep. Allan Walters (R)

Members Excused: Rep. Bill Whitehead.

Members Absent: None.

Staff Present: Sheri Heffelfinger, Legislative Services Division
Keri Burkhardt, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: None.
Executive Action: HB 177, HB 575, HB 579, HB 534, HB 569.

EXECUTIVE ACTION ON HB 177

Amendment: hb017705.ash

Motion: REP. BRAINARD MOVED DO PASS.
{Tape: 1; Side: a; Approx. Time Count: 1.2.}

Motion: REP. BRAINARD MOVED TO AMEND.
{Tape: 1; Side: a; Approx. Time Count: 9.5.}

HOUSE STATE ADMINISTRATION COMMITTEE

February 20, 1997

Page 3 of 5

{Tape: 1; Side: b; Approx. Time Count: 9.2.}

Motion/Vote: REP. REHBEIN MOVED DO PASS AS AMENDED. REP. ADAMS CALLED THE QUESTION. Motion carried 11-5. Rep. Dowell, Rep. Hagener, Rep. Schmidt, Rep. Simpson, and Rep. Whitehead voted no.
{Tape: 1; Side: b; Approx. Time Count: 9.4.}

EXECUTIVE ACTION ON HB 579

Amendment: hb057901.ash

Motion: REP. BRAINARD MOVED DO PASS.
{Tape: 1; Side: b; Approx. Time Count: 10.9.}

Motion: REP. KITZENBERG MOVED TO AMEND.
{Tape: 1; Side: b; Approx. Time Count: 12.3.}

Vote: REP. HEAVY RUNNER CALLED THE QUESTION. Motion carried 14-2. Rep. Heavy Runner and Rep. Rehbein voted no.
{Tape: 1; Side: b; Approx. Time Count: 18.9.}

Motion: REP. KITZENBERG MOVED DO PASS AS AMENDED.
{Tape: 1; Side: b; Approx. Time Count: 19.1.}

Vote: REP. DENNY CALLED THE QUESTION. Motion carried 12-4. Rep. Hagener, Rep. Heavy Runner, Rep. Simpson, and Rep. Whitehead voted no.
{Tape: 1; Side: b; Approx. Time Count: 20.9.}

EXECUTIVE ACTION ON HB 534

Amendment: hb053402.ash

Motion: REP. BRAINARD MOVED DO PASS.
{Tape: 1; Side: b; Approx. Time Count: 21.2.}

Motion: REP. MOOD MOVED TO AMEND.
{Tape: 1; Side: b; Approx. Time Count: 22.4.}

Vote: Motion carried 15-1. Rep. Simpson voted no.
{Tape: 1; Side: b; Approx. Time Count: 32.9.}

Motion: REP. REHBEIN MOVED DO PASS AS AMENDED.
{Tape: 1; Side: b; Approx. Time Count: 33.1.}

Vote: REP. HAYNE CALLED THE QUESTION. Motion carried 13-3. Rep. Hagener, Rep. Heavy Runner, and Rep. Simpson voted no.
{Tape: 1; Side: b; Approx. Time Count: 33.9.}

23



HOUSE STANDING COMMITTEE REPORT

February 20, 1997

Page 1 of 2

Mr. Speaker: We, the committee on State Administration report that **House Bill 534** (first reading copy -- white) **do pass as amended.**

Signed: *Matt Denny*
Matt Denny, Chair

And, that such amendments read:

1. Title, lines 5 and 6.

Strike: "MAKING" on line 6 through "JUDGMENT;" on line 6

2. Title, line 6.

Strike: "SECTION"

Insert: "SECTIONS 2-9-317 AND"

Strike: "REPEALING" through "MCA;"

3. Page 1, line 12.

Following: "(1)"

Insert: "(a)"

4. Page 1, line 15.

Following: "damages."

Insert: "(b)"

5. Page 1, line 16.

Following: "due."

Insert: "For purposes of this section, the interest rate must be as provided in 25-9-205."

JD
2-20-97

Committee Vote:

Yes 13, No 3.

401222SC.Hgd

24

6. Page 1.

Strike: line 21 in its entirety

Insert:

"Section 2. Section 2-9-317, MCA, is amended to read:

"2-9-317. No interest if judgment paid within two years --
exception. ~~If~~ Except as provided in 18-1-404(1)(b), if a
governmental entity pays a judgment within 2 years after the day
on which the judgment is entered, no penalty or interest may be
assessed against the governmental entity.""

-END-

Amendments to House Bill No. 534
First Reading Copy

Requested by Rep. Wells
For the Committee on House State Administration

Prepared by Sheri Heffelfinger
February 18, 1997

1. Title, lines 5 and 6.

Strike: "MAKING" on line 6 through "JUDGMENT;" on line 6

2. Title, line 6.

Strike: "SECTION"

Insert: "SECTIONS 2-9-317 AND"

Strike: "REPEALING" through "MCA;"

3. Page 1, line 12.

Following: "(1)"

Insert: "(a)"

4. Page 1, line 15.

Following: "damages."

Insert: "(b)"

5. Page 1, line 16.

Following: "due."

Insert: "For purposes of this section, the interest rate must be
as provided in 25-9-205."

6. Page 1.

Strike: line 21 in its entirety

Insert:

"Section 2. Section 2-9-317, MCA, is amended to read:

"2-9-317. No interest if judgment paid within two years --
exception. ~~If Except~~ as provided in 18-1-404(1)(b), if a
governmental entity pays a judgment within 2 years after the day
on which the judgment is entered, no penalty or interest may be
assessed against the governmental entity.""

Amendments to House Bill No. 534
First Reading Copy

Requested by Rep. Wells
For the Committee on House State Administration

Prepared by Sheri Heffelfinger
February 18, 1997

1. Title, lines 5 and 6.

Strike: "MAKING" on line 6 through "JUDGMENT;" on line 6

2. Title, line 6.

Strike: "SECTION"

Insert: "SECTIONS 2-9-317 AND"

Strike: "REPEALING" through "MCA;"

3. Page 1, line 12.

Following: "(1)"

Insert: "(a)"

4. Page 1, line 15.

Following: "damages."

Insert: "(b)"

5. Page 1, line 16.

Following: "due."

Insert: "For purposes of this section, the interest rate must be equal to the average yield of 30-year U.S. treasury bonds on the date of the judgment."

6. Page 1.

Strike: line 21 in its entirety

Insert:

"Section 2. Section 2-9-317, MCA, is amended to read:

"2-9-317. No interest if judgment paid within two years --
exception. ~~If Except as provided in 18-1-404(1)(b),~~ if a
governmental entity pays a judgment within 2 years after the day
on which the judgment is entered, no penalty or interest may be
assessed against the governmental entity."

1

House BILL NO. 534

2

INTRODUCED BY

Welb R. Roney

3

4

A BILL FOR AN ACT ENTITLED: "AN ACT MAKING THE STATE LIABLE FOR INTEREST AND ATTORNEY
 FEES IN A JUDGMENT INVOLVING A CONTRACT; ~~MAKING A GOVERNMENTAL ENTITY LIABLE FOR~~
~~INTEREST ON A JUDGMENT;~~ ^{SECTIONS} AMENDING SECTION 18-1-404, MCA; ^{AND} REPEALING SECTION 2-9-317, MCA;
 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

8

9

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10

11

Section 1. Section 18-1-404, MCA, is amended to read:

12

"18-1-404. Liability of state ^(a) ~~limitations~~ -- costs. (1) The state of Montana ~~shall be~~ ^{is} liable in
 respect to any contract entered into in the same manner and to the same extent as a private individual
 under like circumstances, except the state of Montana ~~shall be~~ ^{is} not be liable for interest prior to or after
 judgment or for punitive damages. ^(b) ~~The state of Montana is liable for interest from the date on which the~~
~~payment on the contract became due.~~ ^{For purposes of this section, the interest rate must be}
^{as provided in 25-9-205.}

16

17

(2) Costs may be allowed as provided in 25-10-711. In all other cases, costs ~~shall~~ ^{must} be allowed
 in all courts to the successful claimant to the same extent as if the state of Montana were a private litigant,
 except that such ~~The~~ costs ~~shall~~ ^{must} not include attorney's attorney fees."

20

21

~~NEW SECTION. Section 2. Repealer. Section 2-9-317, MCA, is repealed.~~

22

~~Section 2. Section 2-9-317, MCA is amended to read: . . .~~

23

NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

24

-END-

Rev. Stat. 1879; re-en. Sec. 238, 1st Div. Comp. Stat. 1887; re-en. Sec. 1001, C. Civ. Proc. 1895; re-en. Sec. 6711, Rev. C. 1907; re-en. Sec. 8314, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 576; re-en. Sec. 9314, R.C.M. 1935; R.C.M. 1947, 93-4702(part).

Cross-References

Suretyship, Title 28, ch. 11, part 4.

Principal bound when surety bound,
26-3-104.

25-9-203. How amount expressed. In judgments, the amount thereof must be computed and stated as near as may be in dollars and cents, rejecting fractions of a cent.

History: En. Sec. 3152, Pol. C. 1895; re-en. Sec. 2035, Rev. C. 1907; re-en. Sec. 4285, R.C.M. 1921; Cal. Pol. C. Sec. 3274; re-en. Sec. 4285, R.C.M. 1935; R.C.M. 1947, 93-4710(part).

Cross-References

Money of account, Title 30, ch. 12, part 6.

25-9-204. Clerk to include interest in judgment. The clerk must include in the judgment entered up by him any interest on the verdict or decision of the court, from the time it was rendered or made.

History: En. Sec. 482, p. 230, L. 1867; re-en. Sec. 558, p. 149, Cod. Stat. 1871; re-en. Sec. 500, p. 172, L. 1877; re-en. Sec. 500, 1st Div. Rev. Stat. 1879; re-en. Sec. 513, 1st Div. Comp. Stat. 1887; re-en. Sec. 1570, C. Civ. Proc. 1895; re-en. Sec. 7173, Rev. C. 1907; re-en. Sec. 9806, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1035; re-en. Sec. 9806, R.C.M. 1935; R.C.M. 1947, 93-8622(part).

Cross-References

Execution to include interest, 25-13-304.
Execution sale invalidated, 25-13-713.
Limitation on judgment against joint debt-
or, 25-15-106.

Interest on judgments, Rule 31,
M.R.App.P. (see Title 25, ch. 21).

Interest on torts, 27-1-210.

Judgment when debt not yet due,
27-18-901.

25-9-205. Amount of interest. (1) Except as provided in subsection (2), interest is payable on judgments recovered in the courts of this state at the rate of 10% per annum and no greater rate. Such interest must not be compounded in any manner or form.

(2) Interest on a judgment recovered in the courts of this state involving a contractual obligation that specifies an interest rate must be paid at the rate specified in the contractual obligation.

History: En. Sec. 2588, Civ. C. 1895; amd. Sec. 1, p. 125, L. 1899; re-en. Sec. 5214, Rev. C. 1907; re-en. Sec. 7729, R.C.M. 1921; Cal. Civ. C. Sec. 1820; amd. Sec. 1, Ch. 143, L. 1933; re-en. Sec. 7729, R.C.M. 1935; R.C.M. 1947, 47-128; amd. Sec. 1, Ch. 373, L. 1979; amd. Sec. 1, Ch. 649, L. 1979; Sec. 31-1-110, MCA 1979; redes. 25-9-205 by Code Commissioner, 1979.

Cross-References

Execution of property against judgment
debtor to include interest, 25-13-304.

Interest on torts, 27-1-210.

Validity of interest rate set by contract,
27-1-213.

Interest rates on loans of money, Title 31,
ch. 1, part 1.

Interest at 18% on restitution of wrongfully
received unemployment benefits, 39-51-3202.

Part 3

Entry of Judgment and Satisfaction — Lien

Part Cross-References

"Judgment book" defined, 3-5-507.

Docket, 3-5-508.

Docket to be available for inspection,
3-5-509.

SENATE STATE ADMINISTRATION

Page 4

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ									
HB0389	SIMON, BRUCE	3/03	3/13	3/14	STRENGTHEN THE REQUIREMENTS FOR AN EMERGENCY STATE AGENCY RULE				
					CONCUR AS AMENDED	3/17	VOTE: 4-2		3/20
HB0394	GRINDE, LARRY HAL	3/03	3/12	3/14 3/17 3/24	REGULATE LOBBYING BY STATE AGENCIES				
					CONCUR AS AMENDED	3/27	VOTE: 4-2		3/28
HB0422	GILLAN, KIM	2/19	3/10		ELIMINATE REQ'T FOR ORIGINAL OF FACSIMILE DOCS. TO BE FILED WITH SEC. OF ST.				
					CONCUR AS AMENDED	3/10	VOTE: 6-0		3/11
HB0430	SIMON, BRUCE	3/03	3/20		INCREASE BENEFITS IN THE FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM				
					CONCUR AS AMENDED	3/25	VOTE: 6-0		3/26
HB0439	SCHMIDT, TRUDI	2/19	3/11		EXPAND YOUTH VOTING TO ALLOW STUDENTS TO VOTE AT OTHER THAN POLLING PLACE				
					CONCUR	3/11	VOTE: 6-0		3/12
HB0468	GILLAN, KIM	3/04	3/12		AUTHORIZE SEC. OF ST. TO DEVELOP/IMPLEMENT ELEC. FILING SYSTEM; REQ'TS				
					CONCUR AS AMENDED	3/14	VOTE: 6-0		3/17
HB0496	FELAND, GARY	3/04	3/17		ALLOW CERTAIN COUNTY HOSPITAL/REST HOME EMPLOYEES TO NOT BECOME PERS MEMBERS				
					CONCUR	3-18	VOTE: 5-0		3/20
HB0499	BOHLINGER, JOHN	3/27	4/08		CREATE OFFICE OF STATE COORDINATOR FOR ETHNIC AFFAIRS				
					TABLED ON	04/11	VOTE: 4-2		
HB0501	WAGNER, DOUGLAS	2/21	3/11		REVISE BALLOT AVAILABILITY IN SPECIAL BOND ELECTIONS; REVISING NOTICE				
					CONCUR	3/11	VOTE: 6-0		3/12
HB0505	BEAUDRY, HALEY	3/04	3/19		REDUCING VESTING IN MUNICIPAL POLICE RETIREMENT SYSTEM TO 5 YEARS				
					CONCUR	3/25	VOTE: 6-0		3/26
HB0521	RYAN, WILLIAM	2/21	3/13	3/14	REVISING THE GENERAL RULES FOR DETERMINING RESIDENCE				
					CONCUR AS AMENDED	3/17	VOTE: 5-0		3/18
HB0534	WELLS, JACK	3/06	3/13	3/14	MAKE STATE LIABLE FOR INTEREST/ATTORNEY FEES IN JUDGMENT INVOLVING CONTRACT				
					CONCUR AS AMENDED	3/19	VOTE: 6-0		3/20

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN DON HARGROVE**, on March 13, 1997, at 10:00 a.m., in Room 331

ROLL CALL

Members Present:

Sen. Don Hargrove, Chairman (R)
Sen. Kenneth "Ken" Mesaros, Vice Chairman (R)
Sen. Vivian M. Brooke (D)
Sen. Delwyn Gage (R)
Sen. Fred Thomas (R)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: David Niss, Legislative Services Division
Mary Morris, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 389, HB 521, HB 534
Executive Action: HB 361

EXECUTIVE ACTION ON HB 361

Amendments: HB036101.adn (EXHIBIT 1)

Discussion:

Chairman Hargrove explained the amendments. They have dealt with 5, 7, 8, 9, 11 and 14 and the rest are to be considered jointly.

Mr. Niss explained that the effects of paragraphs 3 and 4 of the amendment is that this would exempt from the posting requirements, household pesticides that are approved by the Department, pursuant to 88-212, for household use. Commercial pesticides are the only pesticides which would be required to be posted for their application. Six is connected to the permanent signing, if regular application is required. Paragraph 10 deletes the date of application from the posting requirement. Paragraph 12 substitutes the phone number from which the person

cross-match activities. It is productive. They have assessed about \$6 million from their compliance effort specific to all kinds of compliance issues.

SEN. GAGE raised concern with (3) which stated that a change of residence may be made only by the act of removal joined with intent to remain in another place. This would put the burden of proof on the taxpayer.

Joe Kerwin, Secretary of State's Office, clarified that Title 13 in election laws has a similar provision which states that there are too many residences for election purposes. They would have no problem with taking that language out. Current law, (6) states that residence can be changed by the union of act and intent.

Closing by Sponsor:

REP. RYAN stated they are trying to stop the practice of buying a fishing license as a non-resident, voting as a resident, and then stating you are a non-resident when licensing a vehicle. If you say you are a resident, you are a resident.

{Tape: 1; Side: A; Approx. Time: 10:33 a.m.; Comments: End of Tape 1, Side A.}

HEARING ON HB 534

Sponsor: **REP. JACK WELLS, HD 27, BOZEMAN**

Proponents: **Herb Richards, construction contractor**
 Carl Schweitzer, Montana Contractors Assoc.
 Dean Bjerke, Diamond Construction
 Gary Hoovestall, CEO of Greenway Enterprises

Opponents: **None**

Opening Statement by Sponsor:

REP. JACK WELLS, HD 27, BOZEMAN, introduced HB 534. According to current law, the state is not liable for interest in certain kinds of contracts. He felt the state should be liable for interest in certain cases, particularly when there is a court judgment involved and the judgment is against the state. This could cause a problem for the state involving contracts for retirement systems. He didn't intend that when he drafted the bill. An example, pointed out to him this morning, was of a person who retired some years ago and elected not to take their retirement. Now they have applied for their retirement. His bill would make the state liable for interest in that retirement contract and that would amount to a sizeable amount of money. An amendment has been recommended, and he agrees with it. It would add a third section after (2). It would state that the

SENATE STATE ADMINISTRATION COMMITTEE

March 13, 1997

Page 6 of 21

provisions of this section do not apply to retirement system contracts administered by the State of Montana. The problems have arisen in construction contracts.

Proponents' Testimony:

Herb Richards, construction contractor, explained that his son had a contract job in Libby in the 1980s and had a dispute with the Department of Transportation over a claim on his work, which was the clearing of the roadway. It took until 1995 to get it into court. It was appealed to the Montana Supreme Court. They ruled a year ago to settle the case. The claim is still not settled. Under the present statute, the Department does not have to pay interest to their citizens on claims or judgments. If the state has a claim against you, you will pay interest to the state. The citizen needs to be treated in the same manner. Because the state did not make a total payment, his son lost his home, business and equipment. He is still paying interest on some of the notes. This will force the Department to negotiate and work on a fair settlement without dragging things out for years.

Carl Schweitzer, Montana Contractors Assoc., rose in support of the bill. If contractors are liable for their interests both to the public and to people they buy machinery and equipment from, it is only fair that the state should be liable.

Dean Bjerke, Diamond Construction, stated this is a fairness issue. The State of Montana and the federal government require them to pay interest on their liabilities. He is not concerned only with judgments, but with normal contract payments that are due in 30 days. As a contractor, he shouldn't have to hound the State of Montana to get paid in a timely manner.

Gary Hoovestall, CEO of Greenway Enterprises, remarked the bill makes sense for financial and fairness reasons. If the government is holding the contractor's money it is getting interest on the money. The contractor has to use his cash reserves or borrow money. If the contractor is forced to go to dispute resolution to collect money that is due, there are a lot of additional costs. If the contractor prevails, the losing party should have to pay lawyer fees and court costs. This bill will correct an existing, unilateral, unjust advantage that the state has.

Opponents' Testimony: None

Informational Testimony:

Kelly Jenkins, Public Employees Retirement System, presented their amendment, (EXHIBIT 3). He also presented his written testimony, (EXHIBIT 4).

33

SENATE STATE ADMINISTRATION COMMITTEE

March 13, 1997

Page 7 of 21

Bill Gianoulis, Chief Defense Counsel, Risk Management and Tort Defense, Department of Administration, stated they have concerns about this bill because it is a broad bill which covers a narrow issue. He presented amendments, (EXHIBIT 5). He stated this could be limited to construction contracts which would eliminate some of the problems. The body of the bill doesn't say whether interest is due only on judgments. It is not consistent with the title of the bill. Under MCA, 17-8-242, contractors can get interest at 18% a year, if the contract is not paid within 30 days. There is a good faith exception to that in 17-8-242 which states that if the state has a good faith dispute, they do not have to pay that interest. That also causes a problem with 25-9-205 which talks about 10% interest per year. Under MCA, 25-10-711 attorneys fees can be awarded if the state defends in bad faith or frivolously. The bill provides two separate approaches to attorneys fees and costs. It says attorneys fees and costs are discretionary under Title 25, bad faith, where there is not bad faith, there is no discretion, attorneys fees and costs must be awarded.

Subsection (1)(b) of the bill says the State of Montana is liable for interest from the date on which the payment on the contract became due. There is no definition of what "became due" means. They have, in their amendments, simply eliminated (b).

Questions From Committee Members and Responses:

SEN. VIVIAN M. BROOKE asked if **Mr. Gianoulis'** amendments were presented in the House? **REP. WELLS** explained that they were not pointed out until this morning.

SEN. BROOKE asked if there was a reason the fiscal note was not signed? **REP. WELLS** stated he did not have an objection to it.

SEN. MESAROS felt the information testimony sounded more like an opponent's testimony. **Mr. Gianoulis** stated some of the problems were brought on by House amendments. He would be happy to work with the sponsor to iron out some of the problems.

SEN. GAGE asked if the exception language in (2) meant that interest would be paid on a judgment for the time up until the judgment is entered but the state has two years after that judgment is entered to pay without any penalty or interest from that day forward. **David Niss** explained that this was to coordinate the current provisions of 317 with 404(d). The only new language in Section 2 is lines 26 and 27. Without the exception on lines 26 and 27, sections 1 and 2 of the bill conflict.

CHAIRMAN HARGROVE asked why they were proposing to strike (b)? **Mr. Gianoulis** felt this was taken care of in Section 1. It provides for interest, and tells what interest rate and the place to look to award the interest, it refers to 17-8-242.

SEN. GAGE asked how this addressed mediations which were handled without going to court? **Mr. Niss** explained the state would have incentive to settle earlier with this bill.

SEN. GAGE remarked that with this bill they do not necessarily need a judgment to have the interest continue. **Mr. Niss** stated that a contractor may have to obtain a judgment in order to collect it.

Closing by Sponsor:

REP. WELLS stated this bill should put the state in a position where they want to negotiate. He has a bit of a problem with the amendment presented by **Mr. Gianoulis** as far as how the interest rate is provided in (b) by 25-9-205 versus where 17-8-242 applies. The problem is the good faith/bad faith wording, a bad faith judgment can be difficult to obtain. **Greg Petesch** suggested using 25-9-205. He does not like the 1st and 2nd amendments presented. The option two amendment is a good addition to this bill in that it defines prevailing parties.

The basic intent of this bill is to make the state liable and treat citizens of the state fairly. This would provide an incentive for the engineers and contract people who work for the state to do a good job in the initial bidding and letting of contracts.

{Tape: 1; Side: B; Approx. Time: 11:12 a.m.; Comments: End of Tape 1, Side B.}

HEARING ON HB 389

Sponsor: **REP. BRUCE SIMON, HD 18, BILLINGS**

Proponents: **None**

Opponents: **Annie Bartos, Chief Legal Counsel, Department of Commerce**
Beth Baker, Assistant Chief Deputy Attorney General, Department of Justice
Russ Cater, Chief Legal Counsel, Department of Public Health and Human Services

Opening Statement by Sponsor:

REP. BRUCE SIMON, HD 18, BILLINGS, reported that, over the past couple of years, he has run into some problems dealing with the whole issue of public notification and rulemaking. He noted that this is a problem all Legislators struggle with, in a variety of ways, but indicated that he has discovered there are some problems with the way the public is notified of what State government is doing that involves the citizens and, a lot of time, people do not know what is being done. He displayed a copy of the *Montana Administrative Register*, asked how many Committee

SENATE STATE ADMIN.

EXHIBIT NO. 3

DATE 3-13-97

BILL NO. HB 534

Amendments to House Bill No. 534
Second Reading Copy as amended by (H) St Admin Com

For the Committee on Senate Judiciary

March 5, 1997

1. Page 1.

Following: line 21

Insert: "(3) The provisions of this section do not apply to retirement system contracts administered by the state of Montana, except those retirement systems are not liable for punitive damages and costs may be allowed the prevailing party as provided in 25-10-711."

JK

TESTIMONY ON HB534

GENERALLY:

The Public Employees' Retirement Board is concerned about the language of HB534 which might cause excessive liability to the retirement systems.

It should be explained that the Montana Supreme Court has called public retirement systems "contracts", so the retirement systems would be covered by this bill.

However, a retirement system contract is different than other state agency contracts. The retirement systems are administered by the Retirement Boards, private citizens (not state employees) who have two jobs: to pay benefits when appropriate and to protect the integrity of the pension trust fund by not paying benefits when benefit payments are not appropriate.

These somewhat conflicting duties are both required by the Montana Constitution. The Boards must serve as trustees of retirement funds, representing the public employees who contribute money to the retirement trust funds. The Boards are required to required by law to exercise their best judgment when allowing or denying benefit payments.

This bill would require payment of attorneys from retirement fund money belonging to retirees and members of the system (not out of an agency budget), simply because the good people sitting on the retirement Boards are not perfect; simply because the citizens on the Board interpreted the retirement system differently than a judge or the Montana Supreme Court.

SPECIFICALLY:

The language of Section 18-1-404, MCA should not be applied to the retirement systems for the following reasons:

> Unlike a contract between private individuals, a retirement system contract can be changed unilaterally by the legislature, as long as the members as a whole are given an equal or greater benefit than the one taken away (as with GABA). So subsection (1) should not apply to retirement systems.

> Unlike a normal contract for services or goods, it is very difficult to determine when a retirement contract becomes "due", as required by subsection (2). Are benefits "due" when a person terminates public employment? When they apply for benefits years later? The date they ask benefits to start (or a statute requires benefits to start), which could be years before or after application? When the retirement Board approves the application? When a court judgment is entered?

> The Public Employees' Retirement Board administers over 44,000 accounts for over 44,000 members. This bill to a plaintiff's attorney makes those numbers look like 44,000 contracts for 44,000 plaintiffs. The Teachers' Retirement System Board also administers tens of thousands of accounts. The retirement Boards could be swamped with claims and suits involving minuscule benefit amounts and real or imagined slights. The cost to defend would be substantial, but worse, the focus of the retirement system would change from administration of benefits to protection against claims.

The citizens who sit on the Public Employees' Retirement Board urge you to recognize their unique position as trustees of pension trust funds. The Board is more than happy to pay tens of millions of dollars in benefits to deserving retirees and their survivors. But the Board can't just pile money in the street and let people take what they want. A line has to be drawn. The pension trust funds should not be penalized because the Board, acting in good faith, draws the line differently than a judge.

MONTANA SENATE
1997 LEGISLATURE
STATE ADMINISTRATION COMMITTEE

ROLL CALL

DATE 3-13-97

[illegible]

DATE 3-13-97

SENATE COMMITTEE ON State Administration

BILLS BEING HEARD TODAY: HB 521 HB 534
HB 389

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Mike Cronin	Dept Corrections	HB 389		✓
Mary Cragle	" "	HB 389		—
Walter Richards	Self	HR 534	✓	
Carl Schwartz	MT Const Ass'n	HB 534	✓	
Kelly Jenkins	POLICE EMPLOYEES' RETIREMENT Bd	HB 534	INFORMATIONAL	
Dean Bierke	Diamond Const	HB 534	✓	
J Miller	DOR (w) amend -	HB 521	✓	
Russ Coker	DPHHS - State Agency	HB 389		✓
Annie Barros	DOC	HB 389		✓
Beth Baker	Dept of Justice	389		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

**MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION
COMMITTEE ON STATE ADMINISTRATION**

Call to Order: By **CHAIRMAN DON HARGROVE**, on March 19, 1997, at 10:00 A.M., in Room 331.

ROLL CALL

Members Present:

Sen. Don Hargrove, Chairman (R)
Sen. Kenneth "Ken" Mesaros, Vice Chairman (R)
Sen. Vivian M. Brooke (D)
Sen. Delwyn Gage (R)
Sen. Fred Thomas (R)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: David Niss, Legislative Services Division
Mary Morris, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 174, 3/11; HB 216, 3/11;
HB 505, 3/11
Executive Action: HB 534 BCIAA; SR 11 A

HEARING ON HB 216

Sponsor: REP. CHASE HIBBARD, HD 54, HELENA

Proponents: Linda King, Public Employees' Retirement Board
Jim Smith, Montana Sheriffs and Peace Officers
Lee Edmisten, Montana Sheriffs and Peace Officers
Jim Dupont, Montana Sheriffs and Peace Officers
Jay Printz, Sheriff, Ravalli County
James Cashell, Montana Sheriffs and Peace Officers
Mike Miller, Flathead County Sheriff's Office
Tony Harbaugh, Montana Sheriffs and Peace Officers
Bob Blades, Cascade County Sheriff's Office
Barry Michelotti, Montana Sheriffs and Peace Officers
Bob Henschel, Montana Sheriffs and Peace Officers
Brian Goodkin, Gallatin County Sheriff's Office

the people who won't vote for it because it's coming out of the General Fund.

SEN. MESAROS asked REP. BEAUDRY if he did not sign the fiscal note because he disagreed with it. REP. BEAUDRY explained he didn't sign it because he didn't see it before he presented the bill in the House Administration Committee. He has no problem signing it, the time was just wrong.

{Tape: 2; Side: A; Approx. Time: 11:42 a.m.; Comments: None.}

Closing by Sponsor:

REP. BEAUDRY stated the bill is very straightforward and puts the police on par with the other similar professions. He asked for the consideration of the Committee.

{Tape: 2; Side: A; Approx. Time: 11:43 a.m.; Comments: None.}

CHAIRMAN HARGROVE asked if SEN. J.D. LYNCH will carry the bill. REP. BEAUDRY responded that SEN. LYNCH may not want to, but that is not a problem.

EXECUTIVE ACTION ON HB 534

Amendments: HB053401.adn (EXHIBIT 6)

Discussion:

David Niss, Legislative Services Division, stated Bill Gianoulias, Risk Management & Tort Claims Division, Department of Administration, had additional pages of changes and questioned whether the committee wants to wait for that information.

CHAIRMAN HARGROVE stated he was proud that the Department of Administration didn't have many complaints.

SEN. BROOKE was concerned with Mr. Gianoulias's testimony which indicated they would be in a bind with various interest rates.

CHAIRMAN HARGROVE noted that is addressed by the first amendment.

Motion/Vote: CHAIRMAN HARGROVE moved that AMENDMENT HB053401.ADN BE ADOPTED. The motion CARRIED UNANIMOUSLY.

Motion: CHAIRMAN HARGROVE moved that HB 534 BE CONCURRED IN AS AMENDED.

Discussion:

SEN. GAGE recalled the committee heard a bill about attorney fees and REP. BRUCE SIMON indicated they had worked on some of their stuff without an attorney. Some of these are represented by

staff attorneys or attorneys who are on salary by firms. He questioned whether an attorney who might take a case on a contingency basis would be within the scope of the bill. Mr. Niss indicated that Mr. Gianoulis included language in his amendments which would have added another subsection to 18-1-404 that would have clarified, to some extent, who gets attorneys fees. He reminded SEN. GAGE that he discussed those amendments with him and that SEN. GAGE indicated he was not interested in going ahead with them.

CHAIRMAN HARGROVE stated that the more a bill is cluttered, the easier it is for the bill to disappear.

Vote: The motion CARRIED UNANIMOUSLY.

{Tape: 2; Side: A; Approx. Time: 11:52 a.m.; Comments: None.}

EXECUTIVE ACTION ON SR 11

Motion/Vote: SEN. GAGE moved that SR 11 BE ADOPTED. The motion CARRIED UNANIMOUSLY.

Amendments to House Bill No. 534
Third Reading Copy

Requested by Sen. Hargrove
For the Committee on State Administration

Prepared by David S. Niss
March 18, 1997

1. Page 1, lines 17 and 18.

Strike: "MUST BE AS PROVIDED IN 25-9-205"

Insert: "is 10% simple interest each year, whether due before or
after a judgment. If the contract does not specify when
interest is payable before a judgment, interest must be paid
at the time provided in 17-8-242(2)"

2. Page 1.

Following: line 21

Insert: "(3) This section does not apply to a contract governed
by Title 19."



SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 19, 1997

MR. PRESIDENT:

We, your committee on State Administration having had under consideration House Bill 534 (third reading copy -- blue), respectfully report that House Bill 534 be amended as follows and as so amended be concurred in.

Signed: Don Hargrove
Senator Don Hargrove, Chair

That such amendments read:

1. Page 1, lines 17 and 18.

Strike: "MUST BE AS PROVIDED IN 25-9-205"

Insert: "is 10% simple interest each year, whether due before or after a judgment. If the contract does not specify when interest is payable before a judgment, interest must be paid at the time provided in 17-8-242(2)"

2. Page 1.

Following: line 21

Insert: "(3) This section does not apply to a contract governed by Title 19."

-END-

SR

Amd. Coord.
Sec. of Senate

Sen. Hargrove
Senator Carrying Bill

601358SC.SRF

HOUSE BILL NO. 534

INTRODUCED BY WELLS, BITNEY

A BILL FOR AN ACT ENTITLED: "AN ACT MAKING THE STATE LIABLE FOR INTEREST AND ATTORNEY FEES IN A JUDGMENT INVOLVING A CONTRACT; ~~MAKING A GOVERNMENTAL ENTITY LIABLE FOR INTEREST ON A JUDGMENT; AMENDING SECTION SECTIONS 2-9-317 AND 18-1-404, MCA; REPEALING SECTION 2-9-317, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.~~"

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 18-1-404, MCA, is amended to read:

"18-1-404. Liability of state -- limitations -- costs. (1) (A) The state of Montana ~~shall be~~ is liable in respect to any contract entered into in the same manner and to the same extent as a private individual under like circumstances, except the state of Montana ~~shall is not be~~ is not be liable for interest prior to or after judgment or for punitive damages.

(B) The state of Montana is liable for interest from the date on which the payment on the contract became due. FOR PURPOSES OF THIS SECTION, THE INTEREST RATE MUST BE AS PROVIDED IN 25-9-205 IS 10% SIMPLE INTEREST EACH YEAR, WHETHER DUE BEFORE OR AFTER A JUDGMENT. IF THE CONTRACT DOES NOT SPECIFY WHEN INTEREST IS PAYABLE BEFORE A JUDGMENT, INTEREST MUST BE PAID AT THE TIME PROVIDED IN 17-8-242(2).

(2) Costs may be allowed as provided in 25-10-711. In all other cases, costs ~~shall~~ must be allowed in all courts to the successful claimant to the same extent as if the state of Montana were a private litigant, ~~except that such~~ The costs shall must not include ~~attorney's~~ attorney fees.

(3) THIS SECTION DOES NOT APPLY TO A CONTRACT GOVERNED BY TITLE 19."

~~NEW SECTION. Section 2. Repealer. Section 2-9-317, MCA, is repealed.~~

SECTION 2. SECTION 2-9-317, MCA, IS AMENDED TO READ:

"2-9-317. No interest if judgment paid within two years -- exception. If Except as provided in 18-1-404(1)(b), if a governmental entity pays a judgment within 2 years after the day on which the

1 judgment is entered, no penalty or interest may be assessed against the governmental entity."

2

3 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

4

-END-

OFFICE OF THE GOVERNOR

STATE OF MONTANA



MARC RACICOT
GOVERNOR

STATE CAPITOL
HELENA, MONTANA 59620-0801

April 21, 1997

The Honorable John Mercer
Speaker of the House
State Capitol
Helena MT 59620

The Honorable Gary Aklestad
President of the Senate
State Capitol
Helena MT 59620

Dear Speaker Mercer and President Aklestad:

In accordance with the power vested in me as Governor by the Constitution and laws of the State of Montana, I hereby return with amendments House Bill 534, **"AN ACT MAKING THE STATE LIABLE FOR INTEREST AND ATTORNEY FEES IN A JUDGMENT INVOLVING A CONTRACT; AMENDING SECTIONS 2-9-317 AND 18-1-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE,"** for the following reasons.

Section 18-1-404, MCA, provides that, for purposes of liability, the State of Montana is to be treated in contract cases in the same manner as private litigants, except with respect to punitive damages.

House Bill 534 would change the section 18-1-1404, MCA, to:

- make the State liable for payment of interest from the date on which the contract became due, rather than from when the sums are capable of calculation, as is the rule for other litigants;
- require the State to pay attorneys fees to a successful claimant in **all** contract actions. By contrast, other litigants must pay attorneys fees in contract cases only if expressly required by the contract itself.

The above-mentioned changes that would be brought about by House Bill 534 would result in treating the State of Montana more harshly than other litigants in contract actions.

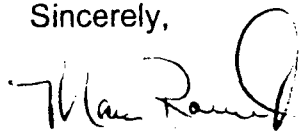
I can understand from the standpoint of fairness that the rules for liability in contract cases should treat litigants equally. House Bill 534, however, does not do that. It would apply different, more onerous rules to one type of litigant -- state government.

The fiscal impact of House Bill 534 is impossible to estimate. Some of the contracts to which the State is a party involve many millions of dollars. Were any of those contracts to result in litigation, the State, unlike a private litigant, could be exposed to significantly increased liability under the provisions of House Bill 534.

I am, therefore, proposing amendments that would specify that costs are awardable against the State in the same manner as against a private individual.

With respect to the immediate date of effect provided in House Bill 534, I propose that, in the interest of fairness, the State be given some time to modify and enter into contracts with knowledge of the changes in the law.

Sincerely,

A handwritten signature in dark ink, appearing to read "Marc Racicot", with a large, stylized loop at the end.

MARC RACICOT
Governor

GOVERNOR'S AMENDMENTS TO
House Bill No. 534
(Reference Copy)
April 21, 1997

1. Title, lines 4 and 5
Following: "LIABLE" on page 4
Strike: "FOR INTEREST AND ATTORNEY FEES IN A JUDGMENT"
Insert: "IN THE SAME MANNER AS A PRIVATE INDIVIDUAL IN CASES"
2. Title, line 7
Following: "AN"
Strike: "IMMEDIATE"
3. Page 1, line 12
Following: "(1)"
Strike: "(A)"
4. Page 1, line 13
Following: "extent"
Insert: ",including costs,"
5. Page 1, lines 16 through 20
Strike: subsection (B) in its entirety
6. Page 1, lines 21 through 23
Following: "25-10-711." on line 21
Strike: remainder of line 21 through line 23 in their entirety
7. Page 1, line 30
Following: "18-1-404(1)"
Strike: "(b)"
8. Page 2, line 3
Following: "**date.**"
Strike: "[This act] is effective on passage and approval"
Insert: "This act is effective on July 1, 1997. It shall apply to causes of actions arising from contracts entered on or after the effective date"